

Message Text

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TAGS: EGEN, EEC
SUBJECT: COURT OF JUSTICE APPEAL OF UNITED BRANDS ANTI-
TRUST CASE

REF: 77 BRUSSELS 16235

1. THE EUROPEAN COURT OF JUSTICE, IN A JUDGMENT GIVEN
FEBRUARY 14, FOUND UNITED BRANDS CO. GUILTY ON THREE OUT
OF FOUR COUNTS OF ABUSE OF DOMINANT MARKET POSITION.

2. THE DECISION CAME ON AN APPEAL BY UNITED BRANDS (UB)
AGAINST A 1975 COMMISSION DECISION TO FINE UB ONE MILLION
UNITS OF ACCOUNT (UA) ON GROUNDS THAT IT HAD MISUSED
ITS MARKET POSITION WHEN IT PROHIBITED RE-EXPORT OF ITS
PRODUCT, INDULGED IN PRICE DISCRIMINATION, AND REFUSED TO
SELL TO A CLIENT (REF). THE COURT REJECTED FOR LACK OF
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EVIDENCE THE COMMISSION CHARGE THAT UB HAD CHARGED
EXCESSIVE PRICES. IT THEREFORE REDUCED THE FINE TO
850,000 U.A.

3. EC ANTI-TRUST OBSERVERS VIEW THIS AS A MAJOR VICTORY
FOR THE COMPETITION DIRECTORATE GENERAL (DG IV) OF THE
COMMISSION WHICH HAS IN RECENT YEARS EXPANDED ITS INFLUENCE

WITH A FEW VERY IMPORTANT CASES UNDER ARTICLE 86 OF THE ROME TREATY. IT ALSO RAISES SOME SERIOUS CONCERNS FOR LARGE MULTINATIONAL COMPANIES IN EUROPE. MUCH OF THE CASE'S ARGUMENT TURNED ON WHETHER OR NOT UB ACTUALLY HAD A DOMINANT POSITION.

4. IN THE COMMISSION'S ESTIMATE, THE PERCENTAGE OF THE BANANA MARKET HELD BY UB WAS ONLY AROUND 45 PERCENT -- MUCH LOWER THAN THE 60-65 PERCENT FIGURE THAT HAS DEVELOPED RECENTLY FOR ARTICLE 86 CASES. THE COURT JUDGED, HOWEVER, THAT MARKET SHARE AND PROFITABILITY (WHICH WAS ALSO LOW) WERE NOT THE ONLY MEASURES OF DOMINANCE. THE COURT SAID IT ALSO DEPENDED, IN UB'S CASE, ON THE STRUCTURE OF THE FIRMS OPERATIONS -- ITS OWNERSHIP OF PLANTATIONS AND SHIPPING FLEETS, AND ITS ABILITY TO PROMOTE A BRAND NAME WORLDWIDE.

5. SENIOR UB OFFICIALS HAVE PUBLICLY SCORED THE COURT'S DECISION CLAIMING THAT HENCEFORTH A COMPANY WOULD BE PRESUMED TO DOMINATE ANY MARKET IN WHICH IT OPERATES BY VIRTUE OF HAVING AN APPRECIABLY LARGER SHARE THAN ITS NEXT LARGEST COMPETITOR, IRRESPECTIVE OF THE EXISTENCE OF ACTIVE AND POWERFUL COMPETITION IN THE MARKET. HINTON

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